

REMARKS

Claims 1-4, 7-9, and 12-25 are pending in this application. Claims 1, 12, 18 and 25 are the independent claims. Claims 3 and 19 have been amended to follow the suggestion in the outstanding action to change the recited “imaging communication device” in these claims to an “imaging communication means” so that claim 1 provides proper antecedent basis.

As the amendments to claims 3 and 19 comply with the requirement of the outstanding Action to provide recitals of the “imaging communication means” having proper antecedent basis in claim 1, entry of the amendment is respectfully submitted to be in order under 37 CFR §1.116.

SUMMARY OF OFFICE ACTION

The outstanding Office Action is a final rejection that again acknowledges the claim for foreign priority and the receipt of the priority document. The outstanding Office Action further acknowledges consideration of the references cited by the IDS filed on August 19, 2008, but continues to fail to acknowledge consideration of the references cited by the IDS filed on June 19, 2007. The outstanding Office Action also again notes the Examiner’s acceptance of the drawings filed on December 5, 2003.

In addition, the outstanding Office Action presents a rejection of claims 3 and 19 under the second paragraph of 35 U.S.C. §112, presents a rejection of claims 1-3, 7-9, 12-16, and 18-25 under 35 U.S.C. §103(a) as allegedly being unpatentable over Kaku (U.S. Patent Application Publication No. 2002/0049728, hereinafter “Kaku”) in view of Carlson (U.S. Patent No. 6,694,151, hereinafter Carlson), a rejection of claim 4 under 35 U.S.C. §103(a) as allegedly being unpatentable over Kaku in view of Carlson and further in view of Muroya et al. (U.S. Patent Application Publication No. 2004/0148404, hereinafter Muroya) and a rejection of claim 17 under 35 U.S.C. §103(a) as allegedly being unpatentable over Kaku in view of Carlson and further in view of Moores, Jr. et al. (U.S. Patent Application Publication No. 2004/0201738, hereinafter “Moores”).

IDS FILED JUNE 19, 2007

As noted in the last response, an Information Disclosure Statement (IDS) was filed on June 19, 2007, that cited two U.S. Patent Application Publications and three Japanese documents on a substitute Form 1449/PTO. Copies of the three Japanese documents were included with English Language Abstracts and it was noted that two of the three Japanese documents corresponded to the two cited U.S. Patent Application Publications. Applicant again requests a copy of this substitute Form 1449/PTO that has been signed and initialed in accordance with the rules to indicate consideration of these references or an appropriate explanation for the failure to follow the rules and provide such confirmation of consideration.

REJECTION OF CLAIMS 3 AND 19 UNDER 35 U.S.C. §112, PARAGRAPH 2

Items 4-5 on pages 2 and 3 of the outstanding Action present a rejection of claims 3 and 19 under the second paragraph of 35 U.S.C. §112. This rejection is respectfully submitted to be overcome by the present amendment that follows the suggestion in the outstanding action of changing the recited “imaging communication device” of these claims to an “imaging communication means.” Accordingly, withdrawal of this rejection is respectfully requested.

REJECTION OF CLAIMS 1-3, 7-9, 12-16, AND 18-25 UNDER 35 U.S.C. §103(a)

Item 7 on page 3 of the outstanding Action presents a rejection of claims 1-3, 7-9, 12-16, and 18-25 under 35 U.S.C. §103(a) as allegedly being unpatentable over Kaku in view of Carlson. This rejection is traversed.

First of all, with regard to independent claim 1 limitations, there is no teaching or suggestion in Kaku of “an imaging communication means included with each associated imaging means for providing wireless data communication with the subject carried terminal devices” emphasis added).

The only teaching of a cell phone terminal as to the relied on embodiment of Fig. 24 that is discussed in paragraph [0179] is that the “radio wave transmitter 360 may be a wireless communication means, for example, a cellular phone, or a PHS.” Nothing is taught here or elsewhere in Kaku that suggests that the radio wave detector 370 that “receives the radio wave

transmitted from the radio wave transmitter 360” performs any transmission function or that this “radio wave detector 370” might be a cellular phone like the radio wave transmitter 360 carried by the character. In this last regard paragraph [0025] only teaches that a “transmitter may include one of an ID card and a cellular phone,” not that a “radio wave detector” will include either one of the transmitter suggested ID card or (“one of” does not mean both of) a cellular phone.

While 40 is noted in paragraph [0179] to be a “camera system” that captures an “image of the character in the predetermined region” nothing is taught or suggested here or in the other relied on paragraphs [0025] and [0027] that even remotely suggests that an “imaging communication means” made up of a cellular phone or ID card is “included with each associated imaging means (40) for providing wireless data communication with the subject carried terminal devices” as incorrectly asserted in the paragraph at the bottom of page 3 of the outstanding Action. The only thing taught in paragraph [0179] is that the radio wave detector 370 “receives radio waves transmitted from the radio wave transmitter 360.” Not only do paragraphs [0025], [0027], and [0179] not teach that a cellular phone or ID card is associated with an imaging means, like camera system 40, there is no teaching or suggestion that the camera system 40 (or the radio wave detector 370) provide “wireless data communication with the subject carried terminal devices” as required for the claim 1 “imaging communication means.” This data communication to the terminal devices is an important aspect of the invention defined by claim 1 as it permits transmitting the photograph of the subject immediately after the photograph is made to the terminal device that has the display for displaying this subject photograph to the subject for review. This avoids the need for the subject to find a location at which review of the photographic image is possible. See the discussion at page 8, line 19 to page 9, line 3 of the specification, for example. No such immediate review is available using the embodiment of FIG. 24 (discussed in paragraph [0179]) of Kaku or any of the other embodiments of Kaku.

The actual reference teachings of Kaku cannot be expanded based on unfounded assumptions and/or speculation as appears to be the case here. *See In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 178 (CCPA 1967) (“The Patent Office has the initial duty of supplying the factual basis for its rejection. It may not . . . resort to speculation, unfounded assumptions or

hindsight reconstruction to supply deficiencies in its factual basis.”). The PTO must, therefore, demonstrate where the applied references teach the claim 1 “imaging communication means” (in accordance with *In re Rijckaert*, 9 F.3d 1531, 1533, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993) requiring the PTO to “indicate where such a teaching or suggestion appears in the reference”) and not simply attempt to inject this non-existent teaching into a reference as has been improperly done here.

Also, claim 1 requires “a control means for controlling the operation of the imaging means so that the imaging means is driven to obtain image data when the terminal device carried by the subject and the imaging communication means become able to communicate with each other to determine the subject is within the image data to be obtained by the imaging means” (emphasis added). Just as paragraph [0179] does not teach or suggest the function of “providing wireless data communication with the subject carried terminal devices” will be performed by camera system 40 (or the “radio wave detector 370”), there is no teaching or suggestion of the “radio wave detector 370” controlling the operation of the camera system 40 as incorrectly stated in the first paragraph at the top of page 4 of the outstanding Action. Instead, paragraph [0179] indicates that “when it is detected that the character is on a predetermined position, the camera control unit 340 prompts the camera system 40 to capture image of the character in the predetermined region” (emphasis added).

Clearly, the camera control unit 340 controls the camera system 40 to capture image of the character when it reaches a predetermined position in the predetermined region, not the “radio wave detector 370” that simply provides the “strength of the received radio wave” to the camera control unit 340 in the unit 300 (as illustrated by FIG. 22). It is then the camera control unit that uses this received signal strength to control the camera system 40 “when it is detected that the character is on a predetermined position” (emphasis added).

In addition, the camera control unit 340 controls the camera system 40 by monitoring received radio wave strength and correlating that received radio wave strength to a “predetermined position” in the image capture region and not by the claimed manner of “when the terminal device carried by the subject and the imaging communication means become able to communicate with each other to determine the subject is within the image data to be obtained by

the imaging means." This is because the FIG. 24 embodiment of Kaku does not provide for any imaging communication means, much less one that can communicate with the terminal device. To whatever extent that the terminal ("radio wave transmitter 360) can send a radio wave to be detected by "radio wave transmitter 360" and the received strength of this wave can be determined, this does not provide for any communication from 370, 340 or 40 to the radio wave transmitter 360.

Further, FIG. 24 and paragraph [0179] of Kaku fail to teach or suggest the feature of claim 1 requiring that "the imaging communication means and the associated imaging means are arranged so that a data communication direction of the imaging communication means and an imaging direction of the imaging means are substantially identical." They also fail to teach the claim 1 feature requiring "the imaging communication device and the imaging means are arranged so that the data communication range of the imaging communication device is substantially within an imaging angle of view of the imaging means."

Rather than explaining how these claim 1 limitations are met by Kaku, the third paragraph on page 4 of the outstanding Action simply repeats the above-noted erroneous assertion that an "imaging communication means" (made up of a cellular phone or ID card) is somehow taught to be included with the associated imaging means (40). This error is then compounded here by the erroneous assertion that this non-existent "imaging communication means" (made up of a cellular phone or ID card) is then in some unexplained manner taught by Kaku to be arranged with the associated imaging means (40) so that a data communication direction of the non-existent "imaging communication means" (made up of a cellular phone or ID card) and an imaging direction of the imaging means (40) are substantially identical because "Kaku teaches at least one of the radio waves transmitted and received between the transmitter and the receiver is directive (Para 27)."

A similar approach is taken in the fourth paragraph on page 4 of the outstanding Action as to again repeating the above-noted erroneous assertion that an "imaging communication means" (made up of a cellular phone or ID card) is somehow taught to be included with the associated imaging means (40) followed by the further erroneous assertion that this non-existent "imaging communication means" (made up of a cellular phone or ID card) is then in some

unexplained manner taught by Kaku to be arranged with the associated imaging means (40) so that the data communication range of the non-existent “imaging communication means” (made up of a cellular phone or ID card) “is substantially within an image angle of view of the associated imaging means (40) (Para 27).”

However, paragraph [0027] teaches nothing about any “imaging communication means” (made up of a cellular phone or ID card) and nothing about any “image angle of view of the associated imaging means (40)” related to the FIG. 24 embodiment discussed in paragraph [0179]. To the extent that this paragraph teaches “[a]t least one of the radio waves transmitted and received between the transmitter and the receiver is directive,” this teaching is directed to an embodiment that uses “a timing detecting unit” that “detects positions of both the objected character and an object to absorb attention of the character” that is different from the FIG. 24 embodiment discussed in paragraph [0179].

The PTO can only rely on these embodiments as they are disclosed by the reference, not on an imagined combination of these two embodiments that is not taught by the reference. In order to suggest that the artisan would have combined teachings from these two isolated embodiments of Kaku, the PTO must establish what would suggest to the person skilled in the pertinent art to select these independent embodiments for combination. *See In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) that makes it clear that a rejection cannot be predicated on the mere identification in a single reference of “individual components of claimed limitations” absent “particular findings . . . as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed.” While many reasons might suggest a combination of reference teachings, the PTO must still present “some articulated reasoning with some rational underpinning” to support such a combination of reference teachings. *See KSR Int’l v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ.2d 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). Not only are no articulated reasons with any rational underpinning presented, the exact manner that paragraph [0027] is being relied on to teach both of the above-noted claim 1 limitations is not set forth.

To the extent that the PTO is suggesting that the teaching of paragraph [0027] that “[a]t least one of the radio waves transmitted and received between the transmitter and the receiver is directive” can be viewed in a vacuum apart from the remaining context of paragraph [0027] that establishes that this is done when “a timing detecting unit” is used that “detects positions of both the objected character and an object to absorb attention of the character,” such an approach violates precedent. See *Kotzab*, *id.*, noting that “[reference] statements cannot be viewed in the abstract” because “they must be considered in the context of the teaching of the entire reference.” This is not new law, note *In re Gordon*, 221 USPQ 1125, 1127 (Fed. Cir. 1984) requiring there to be “a fair reading of the prior art reference as a whole.” Also note *In re Ehrreich*, 590 F2d 902, 200 USPQ 504 (CCPA, 1979) that requires that one “must consider the entirety of the disclosure made by the references, and avoid combining them indiscriminately.”

It is further by now well established that the functional portion of a means plus function claim recitation must be taught exactly as stated by the claim for that reference to be found to meet the means plus function limitation at issue. See *In re Mott*, 194 USPQ 305, 307 (CCPA 1977). As this is clearly not the case here as to the stated reliance on Kaku to teach at least the claim 1 “imaging communication means” and its recited functions, the claim 1 “control means” and its recited functions is in error, and the claim 1 arrangement of the imaging communication device and the imaging means “so that the data communication range of the imaging communication device is substantially within an imaging angle of view of the imaging means.”

In addition, the paragraph bridging pages 4 and 5 of the outstanding Action introduces further reliance on the above-noted paragraph [0027] teaching of Kaku as somehow leading to introduction of teachings related to the Carlson digital camera into the Kaku FIG. 24 embodiment elements including the imaging means 40 and, possibly, the radio wave detector 370. The exact rationale for the combination of teachings is difficult to understand, however, because the mentioned Carlson teachings of a digital wireless RF communication system operating in a microwave band (such as the 2.4 to 2.5 GHz industrial scientific and medical band) is not mentioned in Kaku. Also, the above-noted paragraph [0027] teaching relates to the embodiment that uses “a timing detecting unit” that “detects positions of both the objected character and an object to absorb attention of the character” that is different from the FIG. 24

embodiment discussed in paragraph [0179]. Furthermore, to whatever extent that the paragraph [0027] teaching that “[a]t least one of the radio waves transmitted and received between the transmitter and the receiver is directive” is applicable to the FIG. 24 embodiment, it simply teaches that either the radio wave transmitter 360 has some kind of directional transmission antenna or that the radio wave detector 370 that receives the radio wave transmitted from the radio wave transmitter 360 has some kind of directional receiving antenna or that both the transmission antenna of the radio wave transmitter 360 and the reception antenna of the radio wave detector 370 are directional antennas. Nothing in paragraph [0027] teaches that the radio wave detector 370 should also have its own radio wave transmission antenna and be configured as a device capable of transmitting and receiving a radio wave like the transceiver suggested by Carlson.

In addition, to whatever extent that the FIG. 5 embodiment of Carlson (discussed at col. 5, lines 8-24) teaches forming a directive antenna using a conductive coating, nothing in FIG. 5 or col. 5, lines 8-24 teach or suggest that the directivity of either antenna 42 or 48 should be somehow made “substantially within an imaging angle of view of the associated imaging means (camera 12)” as again improperly assumed without supporting evidence in the record in violation of the above-noted *Warner* decision. Furthermore, even if the artisan had some undocumented and unexplained reason to want to combine a directional receiving antenna with the FIG. 24 camera 40 body of Kaku along the lines of the above-noted FIG. 5 embodiment of Carlson and eliminate the separate radio wave detector 370 shown by FIG. 24 of Kaku, this modification to Kaku would still fall well short of the subject matter of claim 1 because there is still nothing in this modified FIG. 24 embodiment that can be even remotely reasonably equated with the claim 1 required “imaging communication means” or the requirement of claim 1 that the “imaging communication means and the associated imaging means are arranged so that the data communication range of the imaging communication means is substantially within an imaging angle of view of the associated imaging means,” for example.

Accordingly, even if the artisan were to attempt to adapt the above-noted teachings of Carlson and the embodiment of paragraph [0027] of Kaku to modify the embodiment of FIG. 24 of Kaku for reasons not adequately explained in the outstanding Action, there would still be no

valid *prima facie* case of obviousness as to the subject matter recited by independent claim 1 that is also incorporated into dependent claims 2, 3, 7-9, and 19. Consequently, the withdrawal of the rejection of claims 1-3, 7-9, and 19 under 35 USC § 103(a), as being unpatentable over Kaku in view of Carlson is respectfully requested.

Besides dependent claims 2, 3, 7-9, and 19 patenably defining over Kaku in view of Carlson because of their dependency on claim 1, each of these dependent claims set forth further features that are also not taught or suggested by Kaku in view of Carlson. Consequently, the withdrawal of the rejection of dependent claims 2, 3, 7-9, and 19 under 35 USC § 103(a), as being unpatentable over Kaku in view of Carlson is respectfully requested for this reason as well.

Turning to independent claim 12, this claim recites, *inter alia*, “a terminal device carried by the subject and operatively connected to a controller,” and that “the terminal device includes an integral terminal communicator to communicate a unique identification code to the controller when the terminal device is within the operative range of one or more cameras and also includes a display to display the images obtained by the one or more cameras.” The outstanding Action addresses independent claim 12 from the bottom of page 6 through the middle of page 8 with apparent primary reliance on elements 360, 370, and 40 taken from the embodiment of FIG. 24 (discussed in paragraph [0179], not non-existent paragraph [0197] as noted at the top of page 7 of the outstanding Action) and further modifications derived from paragraph [0025] with apparent regard to the character ID noted at the bottom of page 6 that is not disclosed in paragraph [0179].

The primary deficiencies with the analysis of the paragraph bridging pages 6 and 7 of the outstanding Action are that the “radio wave detector 370” is not taught by Kaku to be a controller as discussed above, and while paragraph [0179] can be said to teach that the “radio wave transmitter 360 may be a wireless communication means, for example, a cellular phone, or a PHS,” nothing is taught as to this embodiment also communicating “a unique identification code to the controller when the terminal device is within the operative range of one or more cameras” as claim 12 recites. Even assuming that the intent as to listing “communicate a unique identification code (character ID)” was to use the disclosure of paragraph [0025] to augment the

teachings of paragraph [0179], this augmented disclosure still falls far short of the above-noted recital of claim 12.

In this last regard, paragraph [0025] only teaches that the “transmitter may include one of an ID card and a cellular phone” emphasis added, it does not say both are included. Also, while it also teaches that “character information” can be included on “one of the radio waves between the transmitter and the receiver,” nothing is taught here that the referenced “character information,” “transmitter” and “receiver” is other than as these elements are disclosed relative to the embodiment having the “system constructed by the image management server 20, the character information obtaining unit 30, the character information updating unit 32, the camera system 40, the image selecting terminal 50, and the outputting unit 60” of paragraph [0081] of Kaku. While paragraph [0082] of Kaku indicates that when “the character information is already obtained and the obtained character information is recorded in an ID card, an ID card reader for reading information recorded in the ID card is used as a character information obtaining unit 30” and paragraph [0083] of Kaku indicates that the “character information obtaining unit 30 has a transmitter for transmitting the obtained character information” that could be a wireless transmitter such as a cell phone or wireless transmitter in the ID card, this transmission is to the “character information database 110 in the image management server 20” as noted in paragraph [0083] of Kaku and not to the “radio wave detector 370” of the FIG. 24 embodiment of Kaku.

Once again, the PTO can only rely on the embodiments Kaku as they are disclosed by Kaku, not on an imagined combination of separate Kaku embodiments that is not taught by Kaku. Note the above discussion of the *Kotzab* decision requiring “particular findings . . . as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed” and the above-noted *KSR* decision requiring “some articulated reasoning with some rational underpinning.”

Page 7 of the outstanding Action commits further error by suggesting that something in Katu teaches that “images of the subject which are obtained by the one or more cameras (40) are transmitted to [sic] for display on the terminal device (360) carried by the subject (character). There are no such teachings that applicant can find and if the PTO is to repeat this assertion, it

must follow the above-noted *Rijckaert* decision as to indicating “where such a teaching or suggestion appears in the reference.”

Similarly, the outstanding Action also clearly errs in asserting (at page 7, lines 12-14) that Katu teaches that “370” is a “controller” or that it is “370” that “drives one or more of said cameras (40) only when said terminal device (360) is within the field of view of one or more of said cameras (40).”

In addition, the paragraph bridging pages 7 and 8 of the outstanding Action repeats the above-noted reliance on the above-noted paragraph [0027] teaching of Kaku as somehow leading to introduction of teachings related to the Carlson digital camera into the Kaku FIG. 24 embodiment elements including the imaging means 40 and, possibly, the radio wave detector 370. The clear errors in the interpretations of the above-noted paragraph [0027] teaching of Kaku and those of the FIG. 5 embodiment of Carlson (discussed at col.5, lines 8-24) are repeated here and, accordingly, are traversed again for the reasons fully discussed above.

Accordingly, even if the artisan were to attempt to adapt the above-noted teachings of Carlson and the embodiment of paragraph [0027] of Kaku to modify the embodiment of FIG. 24 of Kaku for reasons not adequately explained in the outstanding Action, there would still be no valid *prima facie* case of obviousness as to the subject matter recited by independent claim 12 that is also incorporated into dependent claims 13-16, 20, and 23. Consequently, the withdrawal of the rejection of claims 12-16, 20, and 23 under 35 USC § 103(a), as being unpatentable over Kaku in view of Carlson is respectfully requested.

Besides dependent claims 13-16, 20, and 23 patentably defining over Kaku in view of Carlson because of their dependency on independent claim 12, each of these dependent claims set forth further features that are also not taught or suggested by Kaku in view of Carlson. Consequently, the withdrawal of the rejection of dependent claims 13-16, 20, and 23 under 35 USC § 103(a), as being unpatentable over Kaku in view of Carlson is respectfully requested for this reason as well.

Turning to independent claim 18, this is a method claim that presents steps that parallel the limitations of claim 12. The outstanding Action relies on the analysis presented for the

rejection of independent claim 12 which analysis is traversed again for all the reasons noted above as to independent claim 12.

Therefore, and as fully discussed above as to independent claim 12, even if the artisan were to attempt to adapt the above-noted teachings of Carlson and the embodiment of paragraph [0027] of Kaku to modify the embodiment of FIG. 24 of Kaku for reasons not adequately explained in the outstanding Action, there would still be no valid *prima facie* case of obviousness as to the subject matter recited by independent claim 18 that is also incorporated into dependent claims 21 and 24. Consequently, the withdrawal of the rejection of claims 18, 21, and 24 under 35 USC §103(a), as being unpatentable over Kaku in view of Carlson is respectfully requested.

Besides dependent claims 21 and 24 patentably defining over Kaku in view of Carlson because of their dependency on independent claim 12, each of these dependent claims set forth further features that are also not taught or suggested by Kaku in view of Carlson. Consequently, the withdrawal of the rejection of dependent claims 21 and 24 under 35 USC §103(a), as being unpatentable over Kaku in view of Carlson is respectfully requested for this reason as well.

With regard to independent claim 25, the outstanding Action notes in the paragraph bridging pages 10 and 11 of the outstanding Action that this claim only differs from claim 18 in that “substantially” was added to claim 25 and that claim 25 is thus “analyzed as previously discussed with respect to claim 1.” As claims 12 and 25 are apparatus claims, it would have been more accurate to say that claim 25 only differs from claim 12 in that “substantially” was added to claim 25 and that claim 25 was thus analyzed as previously discussed with respect to claim 12.

In any event, no matter which previous analysis is being relied on, it is traversed for all the reasons noted above as to independent claims 1 and 12. Therefore, and as fully discussed above as to independent claims 1 and 12, even if the artisan were to attempt to adapt the above-noted teachings of Carlson and the embodiment of paragraph [0027] of Kaku to modify the embodiment of FIG. 24 of Kaku for reasons not adequately explained in the outstanding Action, there would still be no valid *prima facie* case of obviousness as to the subject matter recited by independent claim 25. Consequently, the withdrawal of the rejection of independent claim 25 under 35 USC §103(a), as being unpatentable over Kaku in view of Carlson is respectfully requested.

REJECTION OF CLAIM 4 UNDER 35 U.S.C. §103(a)

Item 9 on page 11 of the outstanding Action rejects claim 4 under 35 U.S.C. §103(a) as allegedly being unpatentable over Kaku in view of Carlson and further in view of Muroya. This rejection is traversed.

Muroya is cited as to the subject matter added by claim 4 and does not cure the deficiency noted above as to the reliance on Kaku in view of Carlson. Accordingly, claim 4 patentably defines over the applied references for at least the same reason that parent independent claim 1 does and withdrawal of this improper rejection of claim 4 under 35 U.S.C. §103(a) as being allegedly unpatentable over Kaku in view of Carlson in further view of Muroya is respectfully requested.

Besides dependent claim 4 patentably defining over Kaku in view of Carlson in further view of Muroya because of its dependency on independent claim 1, dependent claim 4 sets forth further features that are also not taught or suggested by Kaku in view of Carlson in further view of Muroya. Consequently, the withdrawal of the rejection of dependent claim 4 under 35 USC §103(a), as being unpatentable over Kaku in view of Carlson in further view of Muroya is respectfully requested for this reason as well.

REJECTION OF CLAIM 17 UNDER 35 U.S.C. §103(a)

Item 8 on page 11 of the outstanding Action rejects claim 17 under 35 U.S.C. §103(a) as allegedly being unpatentable over Kaku in view of Carlson and further in view of Moores. This rejection is traversed.

Moores is cited as to the subject matter added by claim 17 and does not cure the deficiency noted above as to the reliance on Kaku in view of Carlson. Accordingly, claim 17 patentably defines over the applied references for at least the same reason that parent independent claim 12 does and withdrawal of this improper rejection of claim 17 under 35 U.S.C. §103(a) as being allegedly unpatentable over Kaku in view of Carlson and further in view of Moores is respectfully requested.

Besides dependent claim 17 patentably defining over Kaku in view of Carlson and further in view of Moores because of its dependency on independent claim 12, dependent claim 17 sets

forth further features that are also not taught or suggested by Kaku in view of Carlson and further in view of Moores. Consequently, the withdrawal of the rejection of dependent claim 4 under 35 USC §103(a), as being unpatentable over Kaku in view of Carlson and further in view of Moores is respectfully requested for this reason as well.

CONCLUSION

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Raymond F. Cardillo, Jr., Reg. No. 40,440 at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37.C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Dated: March 12, 2009

Respectfully submitted, #40,439


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